

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 895 of 2016**

1. Hemlata Tahawait W/o Jalaj Thawait Aged About 29 Years R/o Near Ambedker Chowk, Shankar Nagar, Tahsil & District Durg, Chhattisgarh.
2. Ku. Mugdha Thawait D/o Jalaj Thawait Aged About 2 Years Minor Through Legal Guardian Mother Hemlata Thawait (Application No. 1) R/o Near Ambedkar Chowk, Shankar Nagar, Tahsil & District Durg, Chhattisgarh.

---- Applicants**Versus**

- Jalaj Thawait S/o Dhananjay Thawait Aged About 30 Years R/o Kamred Sudhir Mukharjee Ward, Hanuman Nagar, Tahsil & District Raipur, Chhattisgarh.

---- Respondent

For Applicants
For Respondent

Mr. Avinash Chand Sahu, Advocate
Mr. S.C. Rajput, Advocate.

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****15.12.2016**

1. The present Criminal Revision has been preferred assailing the order dated 25.07.2016 passed by the 3rd Additional Principal Judge, Family Court Durg in Misc. Criminal Case No. 454/2014.
2. Vide the said impugned order the Court below in a proceeding under Section 125 of the Cr.P.C. has ordered for grant of maintenance to the present Applicants at the rate Rs. 2500/- per month each, subject to the adjustment of any other amount which the Applicant No.1 is getting as maintenance amount in other proceedings.
3. Learned Counsel for the Applicants submits that the impugned order is

bad in law for the reason that the amount of maintenance awarded by the Court below is on lower side. According to the Applicants the present Respondent is working with the State Government as Shiksha Karmi Grade-III and his gross salary is more than Rs. 20,000/- per month. Therefore the amount of maintenance awarded should have been at least $\frac{1}{3}$ rd of the gross salary where as the Court below has awarded only Rs.5000/-. Therefore, the impugned order needs interference accordingly.

4. The Counsel for the Applicants further submits that, the observation of the Court below in the operating para of the impugned order is bad in law for the reasons that in case such adjustments are made then the amount of maintenance what the Applicants would be getting after deduction would be too meagre an amount for sustenance and survival, therefore the said observation needs to be quashed.
5. Learned Counsel for the Respondent at this juncture submits that the entire objection is totally misconceived. Firstly, the Applicant No.1 is not entitled for any maintenance amount on the basis of her conduct as is reflected from the evidence which has come on record that is inspite of repeated efforts by the Respondent, it is Applicant – wife who has not gone and stayed with her husband. It is the adamant approach of the Applicant-wife on account of which she is staying separately. According to the Counsel for the Respondent in the instant case the Respondent has also initiated proceeding for restitution of conjugal rights. Yet in spite of the conciliation proceeding held the Applicant-wife refused to go and stay with her husband which by itself shows that there was no any compelling circumstances on part of the Respondent by which the Applicants are

forced to leave the matrimonial home. Accordingly, prays for rejection of the present Revision Petition.

6. Having considered the rival contentions put forth on either side and on perusal of the record what clearly reflects from the submission made by the Counsel for the parties and on perusal of the records is that there are three proceedings going on between the parties. Firstly, the divorce petition pending before the Family Court, Raipur moved at the instance of the Respondent-husband where under Section 24 of the Hindu Marriage Act the Applicant-wife is already getting Rs. 2000/- per month toward expense for each day of hearing. Second proceeding between the parties is the proceeding under Domestic Violence Act before J.M.F.C, Durg where there is an award of Rs. 2000/- as maintenance to the Applicant wife. Third is the present Revision Petition drawn by the Applicants in which under Section 125 of the Cr.P.C. the present Applicants sought for grant of maintenance has been allowed and ordered to be paid Rs. 2500/- per month to each of the Applicants totalling Rs. 5000/-
7. If we take into consideration the total amount of money which has been awarded in the three proceedings it would clearly show that in all the amount awarded in favour of the Applicants either by way of maintenance or by way of legal expenses to be made for attending divorce case at Raipur, it comes to Rs. 9000/- per month. The Family Court while passing the impugned order has only ordered that in case any maintenance amount which the Applicant No. 1 is already receiving, the said amount shall be adjusted from the amount payable from the proceeding under Section 125 of the Cr.P.C. Even if that is taken into consideration the amount which the Applicants otherwise

would receive apart from the interim maintenance awarded under Domestic Violence Act i.e.Rs. 2000/- if adjusted even then the Applicants are getting Rs. 7000/- per month as maintenance amount payable to the two Applicants.

8. If we take into consideration the salary of the Respondent-husband i.e. Rs. 20,000/- per month as per the Applicant herself an amount of Rs. 7000/- per month would be receivable to the Applicants after the concerned amount of money awarded under the Domestic Violence Act is deducted. Thus Rs. 7000/- per month is more than $\frac{1}{3}$ rd of the gross salary received by the Respondent husband.
9. It is made clear that it is only the maintenance amount which is being paid under the Domestic Violence Act which would be adjusted as per the order of the Family Court in the proceeding under Section 125 of the Cr.P.C. from the maintenance amount payable to the Applicant-wife. The money which the Applicant -wife is receiving for attending divorce Petition at Raipur would not be taken into consideration for adjustment.
10. With the aforesaid observation the present Revision Petition stands dismissed.

Sd/-

(P. Sam Koshy)
JUDGE